

STATE OF NORTH DAKOTA
OFFICE OF SECURITIES COMMISSIONER

IN THE MATTER OF:)	RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER
)	
Wayne Jorve)	
)	
Respondent)	

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A complaint was filed with the North Dakota Securities Commissioner (“Commissioner”) by Lucien Peterson regarding the activities of Wayne Jorve, the Respondent in this matter. On March 3, 2000, based on the Peterson complaint, the Commissioner issued a Cease and Desist Order, Notice of Civil Penalty, and Notice of Right to Request a Hearing (“Cease and Desist Order”) to Jorve. Jorve requested a hearing. The parties engaged in settlement discussions but were unable to informally resolve this matter.

On August 21, 2000, the Commissioner requested the designation of an administrative law judge (ALJ) from the Office of Administrative Hearings to conduct a hearing and to issue recommended findings of fact and conclusions of law, as well as a recommended order, in regard to this matter. On August 22, 2000, ALJ Allen C. Hoberg was designated.

On September 11, 2000, a prehearing conference was held as scheduled. It was attended by the ALJ, Matthew O. Bahrenburg, attorney for the Commissioner, and Ronald G. Splitt, attorney for Mr. Jorve. As a result of the prehearing conference, the ALJ issued a Prehearing Conference Summary and Briefing Schedule. At the prehearing Conference the parties agreed to submit this matter for decision to the ALJ based on a stipulation of facts and the submission of briefs. The Prehearing Conference Summary and Briefing Schedule provides a schedule for

submission of a stipulation of facts and briefs. The parties filed a Stipulation of Facts and Issues and filed their briefs in accordance with the requirements of the Prehearing Conference Summary and Briefing Schedule. Mr. Bahrenburg filed the Commissioner's briefs. Mr. Splitt filed the brief for Mr. Jorve.

The Stipulation of Facts and Issues will substitute for Findings of Fact and a Statement of the Issues in this matter. Therefore, it is not necessary for this decision to separately state the issues or find facts.

Based on the Stipulation of Facts and Issues and the briefs of the parties, the administrative law judge makes the following conclusions of law.

CONCLUSIONS OF LAW

1. During the time of the execution and delivery by Jorve to Peterson of a written promissory note, and the execution and delivery by Jorve to Peterson of a real estate mortgage, *i.e.*, on or about October 16, 1995, Jorve was a registered securities salesman in North Dakota for Intersecurities, a broker/dealer registered in North Dakota. At that time, as such, Jorve was subject to the provisions of the securities laws of North Dakota. N.D.C.C. ch. 10-04. During a substantial portion of the time from 1992 to July 1997, Peterson was Jorve's client. In other words, Peterson was a securities customer of Jorve.

2. The execution and delivery by Jorve to Peterson of a written promissory note, and the execution and delivery by Jorve to Peterson of a real estate mortgage, that occurred on or about October 16, 1995, (that is more fully described in stipulation paragraphs nos. 2-4) (hereinafter the "transaction") constitutes a securities transaction.

3. The transaction constitutes a violation of the securities laws as set forth in the Cease and Desist Order. Specifically, the transaction involved the sale of an investment, *i.e.*, the sale of a security as defined by N.D.C.C. § 10-04-02(15), that was not registered with the Commissioner as required by N.D.C.C. § 10-04-04. The investment or security was not an exempt security under N.D.C.C. 10-04-05, or offered for sale or sold in an exempt transaction under N.D.C.C. § 10-04-06.

4. The Commissioner has authority under N.D.C.C. § 10-04-16(1) to issue a cease and desist order against Jorve for a violation of the provisions of N.D.C.C. ch. 10-04. Also, the Commissioner has authority under N.D.C.C. § 10-04-16(1) to impose and collect a civil penalty in an amount not to exceed \$10,000 for each violation of N.D.C.C. ch. 10-04. The Commissioner has discretion to impose and collect either a lesser civil penalty or the maximum allowed.

5. The transaction, the sale of an investment that was not registered with the Commissioner as required by law, and not exempt as a security or transaction, was made in violation of N.D.C.C. ch. 10-04. Therefore, a civil penalty, up to the maximum civil penalty, may be imposed by the Commissioner. Also, the Commissioner may issue a cease and desist order following such a transaction.

6. Though not directly stated as an issue in this matter, there is also an issue of whether Jorve engaged in a dishonest and unethical practice as a sales agent. Apart from the question of whether the transaction involved a security and whether it was in violation of N.D.C.C. § 10-04-04, the transaction was inappropriate. The facts show that Jorve violated the provisions of N.D. Admin. Code § 73-02-09-03(1) by borrowing money from his customer at a time when he was a sales agent subject to the provisions of N.D.C.C. ch. 10-04.

ANALYSIS OF THE LAW

Jorve seems to argue that the note involved in the transaction is not a security. However, the note is a security as defined by N.D.C.C. § 10-04-02(15). Notes secured by real property can be a security. There is nothing in the law that the ALJ is aware of or that the parties have stated to indicate otherwise.

Jorve's defense focuses on the exemptions found in N.D.C.C. §§ 10-04-05 and 10-04-06. Jorve specifically focuses not on the security exemptions of N.D.C.C. § 10-04-05 but on the transactional exemptions of N.D.C.C. § 10-04-06. A reading of either of these exemption sections as the Commissioner's brief demonstrates indicates that there are no provisions clearly applicable. Jorve bears the burden of showing that the transaction falls within an exemption. Jorve has not shown that any of the exemptions found in either N.D.C.C. §§ 10-04-05 or 10-04-06 are applicable. He has failed in his burden of proof to invoke an exemption under either section.

Jorve relies primarily on the exemptions found in N.D.C.C. § 10-04-06(2) and (3) as defenses to the violations alleged by the Commissioner. His reliance is misplaced. He argues that the "transaction was not one that was contemplated by the legislature as being one subject to the State Securities Regulations." He provides no support for this argument, however.

Moreover, a plain reading of these two subsections of N.D.C.C. § 10-04-06 upon which Jorve primarily focuses his arguments does not indicate a legitimate exemption. Jorve has failed in his burden of proof in this regard, too, and the Commissioner's brief also clearly demonstrates that neither of these two subsections apply. The Commissioner cites an Idaho "no-action letter" that discusses an Idaho exemption that is not found in North Dakota law. Such an exemption, if

it existed in North Dakota law, may have provided Jorve a defense, but the two exemption subsections that he relies on clearly do not.

Jorve maintains that there may be thousands of transactions similar to this one that other people have entered into, however, although they may be similar in most respects, they likely do not involve a transaction between a sales agent and his customer or client.

Suffice it to say that under the current laws of North Dakota, the note secured by real property in this matter is a security and there is no exemption that specifically exempts the transaction regarding the note on either a security or transactional basis. Therefore, without registration of the note as a security, the transaction is in violation of N.D.C.C. § 10-04-04.

RECOMMENDED ORDER

The greater weight of the evidence shows that Jorve violated the provisions of N.D.C.C. § 10-04-04 by engaging in the transaction with Peterson. The Commissioner's Cease and Desist Order was authorized and appropriate. Further, the Commissioner's imposition of the maximum civil penalty is authorized and appropriate in his discretion. It is ORDERED that the Commissioner's administrative action taken in his March 3, 2000, Cease and Desist Order is AFFIRMED.

Dated at Bismarck, North Dakota, this 7th day of November, 2000.

State of North Dakota
Syver Vinje
Securities Commissioner

By: _____
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